

SUMMARY OF COMMON FORMS FOR SOCIAL ENTERPRISES

	Trust or Unincorporated Association	Charitable Incorporated Organisation (CIO)	Industrial & Provident Society (IPS)		Companies (including community interest companies (CICs))				LLP
			Benefit of Community (BenCom)	Cooperative	Guarantee		Shares		
					Company Ltd by Guarantee	CIC Ltd by Guarantee	Company Limited by Shares	CIC Ltd by Shares	
Likely to be used for ¹	Unincorporated associations: sports clubs, small community projects Trusts: small grant making charity	New charities, in particular service providing <i>(note possible difficulties with secured borrowing –see Debt finance below)</i>	Democratic, community focused non-profit organisations (e.g. housing association, credit union, community development finance institution)	Community development finance institutions (e.g. credit unions) and more commercial social enterprises with members	Most new charities prior to 2013 introduction of CIO. Larger charities including service-providing. Grant funded or not for profit companies	Specifically designed for social enterprises with protected social mission	Usually a commercial venture. May be used for social purposes. Very rarely a charity ²	Specifically designed for social enterprises with protected social mission	Joint venture project or consortia, particularly where see-through tax beneficial
Social purpose protected?	If charitable or constitutional requirement	Yes	FCA must approve any changes to rules	FCA must approve any changes to rules	If charitable or constitutional requirement	Yes	Only if constitutional requirement	Yes	If in Members’ Agreement
Tax Treatment – very brief summary ³	No charitable tax breaks if non-charitable. If charitable, similar to CIO	No corporation tax for charitable activities. SDLT and CGT exemptions. Rates relief. ⁵ Gift Aid on donations	If charitable, same as for CIO. Rates relief sometimes given even if not charitable	Interest (similar to dividends) can be paid on shares which may also attract tax incentives. ⁴	No charitable tax breaks if non-charity. If charitable, same as for CIO	No charitable tax breaks. Rates relief sometimes (rarely) given	No particular tax reliefs (although see note 4)	No charitable tax breaks. Rates relief sometimes (rarely) given. ⁴	Tax charge on members’ profit share. No particular tax reliefs
Purposes	If non charity = any If charity = charitable and for public benefit	Charitable and for public benefit	Benefit of the community	Benefit of its members	If non charity = any If charity = charitable and for public benefit	Benefit of the community	Any	Benefit of the community	Any commercial purposes
Asset Lock	If charitable	Yes	Yes (although loopholes) but definitely if charitable	No, unless specified (and loopholes)	Usually, but definitely if charitable	Yes	No (although can include exceptionally)	Yes	If in Members’ Agreement
Members voting rights	Unincorporated Association: as set out in the rules/ constitution and usually one member, one vote. Trusts do not have members	Usually one member, one vote	One member, one vote	One member, one vote	Usually one member, one vote	Usually one member, one vote	Usually proportionate to shareholding	Usually proportionate to shareholding	As per Members’ Agreement
Debt finance	Yes <i>(bank/lender may require personal guarantee from trustee(s))</i>	Yes <i>(although presently no register of charges and so likely issues with security)</i>	Yes <i>(if charitable, ensure repayment terms are reasonable)</i>	Yes	Yes <i>(if charitable, ensure repayment terms are reasonable)</i>	Yes <i>(caps on performance related interest (quasi equity))</i>	Yes	Yes <i>(caps on performance related interest (quasi equity))</i>	Yes
Equity finance available	No	No	Yes, although limitations (plus additional caps if charitable)	Yes, although limitations <i>(useful for start-up capital)</i>	No	No	Yes <i>(useful for equity investment via shares)</i>	Yes, although dividend cap <i>(useful for equity investment via shares)</i>	Yes
Constitution	‘Constitution’ or ‘Trust deed’	Constitution	Rules	Rules	Articles of Association	Articles of Association	Articles of Association	Articles of Association	Members’ Agreement
Regulator	None / Charity Commission (if charitable and above threshold)	Charity Commission	Financial Conduct Authority ⁶	Financial Conduct Authority ⁶	Companies House (& also Charity Commission if charitable and above threshold)	Companies House & CIC Regulator	Companies House	Companies House & CIC Regulator	Companies House

KEY

Unincorporated

Incorporated (i.e. Limited Liability)

Charity

Can be a charity

Not a Charity

This summary is designed to give you an overview only. It should not be acted on without taking professional advice on a given situation.

1 Charity status is likely to be driven by a long-term desire to benefit the public and safeguard the assets of the charity.
2 In exceptional circumstances (e.g. US/UK dual registered charities), share companies may be charities but this is extremely unusual.
3 VAT planning will also be relevant, which is outside the scope of this note, but please note that charities are not exempt.
4 Other investment tax reliefs may also apply in some circumstances: Seed Enterprise Investment Scheme, Enterprise Investment Scheme and Venture Capital Trusts. Further, a consultation on social investment tax relief is ongoing at the time of writing.
5 Rates relief for charities is mandatory at 80% relief and a further discretionary 20% (at the Local Authority's discretion).
6 Many charitable IPSs will soon need to register with the Charity Commission.
NB: CASCs are increasingly popular for amateur sports clubs and offer some tax relief. Please see separate **Stone King briefing**.